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In The

Supreme Court of the United States

October Term, 1993

COUNTY OF BERKS, PENNSYLVANIA, *et al.*,

Petitioners,

v.

MERRY J. MURTAGH, *et al.*,

Respondents.

On Petition For A Writ Of Certiorari
To The Supreme Court Of Pennsylvania,
Middle District

BRIEF OF AMICUS CURIAE PENNSYLVANIA SCHOOL BOARDS ASSOCIATION IN SUPPORT OF THE PETITION FOR WRIT OF CERTIORARI

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STATEMENT OF INTEREST

The Pennsylvania School Boards Association is a voluntary association composed of the 501 local public school districts of the Commonwealth of Pennsylvania and the members of the boards of school directors of those school districts. Organized in 1895, the Pennsylvania School Boards Association was the first such association in the nation. The function of the association is to render assistance to local public school districts and to

represent the general public interest in the field of public education.

The Pennsylvania School Boards Association files this brief as *amicus curiae,* with the consent of the parties pursuant to Supreme Court Rule 37.2, because this appeal involves an issue of critical and direct concern to all Pennsylvania public school districts. This brief is filed in support of the Petition for Writ of Certiorari, and urges both that the Petition be granted and that the judgment of the Supreme Court of Pennsylvania be reversed.

It should not be inferred from the positions expressed herein that the Pennsylvania School Boards Association necessarily opposes the underlying goals of the taxpayers in this action. Tax assessment schemes should be fair, uniform, consistent and orderly. When they are not, public backing for tax-supported institutions erodes. It is even possible that assessment practices of the nature alleged to exist in this case actually deprive school districts of property tax revenues. However, the judicial avenue taken by the plaintiffs below poses a much a greater immediate threat to municipal administration and finances.

REASONS FOR GRANTING THE WRIT

Summary.

The Pennsylvania School Boards Association generally concurs with the Petition for Certiorari's cogent discussion of the reasons for granting a writ of certiorari in

this case, which needs no repetition. It is believed appropriate at this juncture to simply offer a few additional and important perspectives.

It is regrettable that the obligation of state courts to hear federal challenges to state tax assessments under 42 U.S.C. § 1983 law should vary from state to state, and that state courts must wrestle with the issue on their own in the absence of direct guidance from the federal courts. The Supreme Court of Pennsylvania's conclusion that recent pronouncements of this Court command state courts to hear such challenges, although in the minority, threatens to prompt disproportionate uncertainty and litigation on this federal question.

The challenge brought in this case clearly illustrates that interference with state tax collection systems engendered by federal challenges under § 1983 is no less intrusive and no less offensive to traditional considerations of comity and federalism when state courts are obligated to entertain them in preference to their statutory remedies. Congress could not have intended that state courts be compelled by federal law to inflict the harm federal courts may not.

1. The Petition Should Be Granted Because State Courts of Last Resort Have Resolved The Question Presented In Conflicting Ways.

Petitioners' survey of state court jurisprudence, which need not be repeated here, amply demonstrates that the decision of the Supreme Court of Pennsylvania is in direct conflict with the results reached by the vast majority of state courts of last resort that have addressed

the question presented by Petitioners for review. *See* Petition, discussion at pp. 15-22.

Consequently, challenges in many states to the assessment of state taxes, constitutional or otherwise, must be pursued exclusively within the administrative and judicial framework devised by the state legislature for that purpose. In those states, litigants may not bypass such remedies by bringing claims under 42 U.S.C. § 1983 in either federal or state court. In Mississippi, and now in Pennsylvania, they may do so in the state courts. *Murtagh v. County of Berks*, 634 A.2d 179, 185 (Pa. 1993) (reprinted in Petition, App. at 12a-13a); *Burrell v. Mississippi State Tax Commission*, 536 So. 2d 848, 862-64 (Miss. 1988). Because this federal question, *see Howlett v. Rose*, 496 U.S. 356, 366 (1990), has thus far been decided exclusively and divergently by state courts, the result is that the availability of a *federal* right of action under § 1983 to challenge tax assessments turns on nothing more than which state flag flies over the courthouse.

The decision of the Supreme Court of Pennsylvania demonstrates that this divergence extends beyond whether some states are simply *amenable* to entertaining § 1983 challenges to tax assessments as an alternative to their own statutory remedies. Here, the Supreme Court of Pennsylvania has concluded that the Supremacy Clause of the United States Constitution *compels* a state court to exercise jurisdiction over a § 1983 challenge, and *prohibits* it from requiring that the state's statutory remedies be pursued, *Murtagh*, 634 A.2d at 184-85, regardless of whether such remedies are plain, adequate and complete. *Id.* at 182 n.11.

The need for resolution of this conflict, recognized when this Court granted certiorari to consider the issue in *Spencer v. South Carolina Tax Comm'n*, 316 S.E.2d 386 (S.C. 1984), *aff'd by an equally divided court*, 471 U.S. 82 (1985) (per curiam) (Powell, J. not participating), is made even more acute by the belief of the court below that its conclusion was commanded by this Court's subsequent decisions in *Howlett v. Rose*, 496 U.S. 356 (1990) and *Felder v. Casey*, 487 U.S. 131 (1988). *Murtagh*, 634 A.2d at 185. By suggesting that contrary state decisions reached prior to *Howlett* and *Felder* are of questionable continued validity, Pennsylvania's departure from the mainstream invites renewed litigation of this question in those and many other jurisdictions.

2. The Petition Should Be Granted Because It Presents An Important And Unsettled Question Of Federal Law That Should Be Settled By This Court

This case sharply illustrates the disarray and disruption caused by federal interference in state tax matters, a danger long recognized and sought to be avoided by Congress and this Court. *See California v. Grace Brethren Church*, 457 U.S. 393, 408-11 nn. 22-23 (1982). The intrusiveness and chilling effect brought about by the mere pendency of the action itself is remarkably similar to that observed and condemned by the Court in *Fair Assessment in Real Estate v. McNary*, 454 U.S. 100, 114 (1981).

Nearly one hundred school districts, townships and other municipalities have been haled into court to defend

themselves at public expense, diverting officials from their duties and revenues from their intended purposes. Such entities, which have the right to appeal tax assessment decisions and to intervene in pending judicial appeals, *Truck Terminal Motels v. Berks County*, 561 A.2d 1305 (Pa. Commw. Ct. 1989), *app. denied*, 581 A.2d 576 (Pa. 1990), would not otherwise be parties if the state statutory mechanisms for challenging tax assessments were required to be pursued and permitted to function as intended. *See* Third Class County Assessment Law, PA. STAT. ANN., tit. 72, §§ 5349, 5350i (Supp. 1993-94). No longer guided by statutory provisions for sequestering and authorizing the partial expenditure of disputed revenues, their treasuries exposed to unknown awards of damages and attorneys fees, local government spending plans are of uncertain reliability.

The evil of federal interference in state tax collections, historically abhorred and forbidden by Congress and this Court, is not dispelled simply because these circumstances result from a § 1983 action brought in a state court. When a state court concludes that it has been commanded by Congress and the Supremacy Clause to disregard state tax assessment remedies in favor of entertaining a federal remedy shaped by the federal courts, the interference remains federal in nature. To suppose that the intrusion upon state tax collection would be any less is to presume that state courts will refuse to provide the same scope of relief normally available to § 1983 litigants in a federal court.

The end result is no less offensive to principles of comity and federalism than were the federal court damages actions barred by this Court in *McNary*, 454 U.S. at

116. The Court's statement therein that "[s]uch taxpayers must seek protection of their federal rights by *state remedies*, provided of course that those remedies are plain, adequate and complete . . . ," *Id.* (emphasis added) (footnote omitted), is difficult to interpret as meaning instead that such taxpayers must seek protection by federal remedies pursued in state courts.

The specific prohibition only of injunctive relief in the Tax Injunction Act, 28 U.S.C. § 1341, has not prevented this Court from extending the Act's restraints to bar declaratory judgment challenges to state tax systems, finding such actions to be equally contrary to the intent of Congress. *Grace Brethren Church*, 457 U.S. at 408. In light of the indications and longstanding sensitivities underlying that intent, it is doubtful that Congress imagined, much less intended, that federal law would dictate the disruptive intrusions and wholesale displacement of state tax assessment remedies the Supreme Court of Pennsylvania believes states are compelled to accept.

It is thus apparent that the importance traditionally attached by Congress and the Court to such considerations is at odds with the view taken by the Supreme Court of Pennsylvania, a view purported nonetheless to be commanded by this Court's pronouncements in non-tax cases. Only by granting the Petition for Writ of Certiorari can a perpetuation of this conflict be avoided.

CONCLUSION

The question presented for review, although one of federal law, has long evaded the scrutiny of the federal courts and is the focus of growing conflict among the state courts of last resort. The importance of this recurring and unsettled question, and the pressing need for a uniform answer, are readily apparent. The Petition for Writ of Certiorari offers a timely and compelling occasion for this Court to attempt again to provide a resolution. *Amicus Curiae* the Pennsylvania School Boards Association respectfully urges that the Petition be granted.

Respectfully submitted,

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